

NEW YORK CITY DEPARTMENT OF BUILDINGS

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Buildings (DOB) is proposing to amend the rules regarding construction superintendents, site safety and concrete safety managers.

- **When and where is the hearing?** DOB will hold a public hearing on the proposed rule online. The public hearing will take place at 11am on 10/31/22.
- Join through Internet – Desktop app:

To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar. Then follow the prompts to either continue using the browser or download/open the Teams desktop app.

<https://tinyurl.com/Buildings2022Construction>

Enter your name when prompted and click the **“Join now”** button. If you don't have computer audio or prefer to phone in for audio, select **“Phone audio”** under **“Other join options”** then click the **“Join now”** button. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins. If you are using phone audio then follow the dial-in instructions when prompted.

If you have low bandwidth or inconsistent Internet connection, we suggest you use the Phone audio option for the hearing. This will reduce the possibility of dropped audio and stutters.

- Join through Internet - Smartphone app:

To join using the Microsoft Teams app on your smartphone, click on the following URL link from your phone to automatically open the Teams app. Note that the Microsoft Teams app must already be installed on your smartphone. It is available for free both in the Apple Store and Google Play.

<https://tinyurl.com/Buildings2022Construction>

When prompted select “Join meeting”. Type your name and then select “Join meeting” again. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

Alternatively, open the Teams app and select “Join a meeting”. Signing in with an account is not required. Type your name, the following Meeting ID and Passcode, then select “Join meeting”.

Meeting ID: 220 396 547 081

Passcode: 3vLFXo (Code is case sensitive)

- Join via phone only:

To join the meeting only by phone, use the following information to connect:

Phone: +1 646-893-7101

Phone Conference ID: 312 852 813

You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the DOB through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to dobrules@buildings.nyc.gov.
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up by emailing dobrules@buildings.nyc.gov by 10/24/22 and including your name and affiliation. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 10/31/22.

What if I need assistance to participate in the hearing? You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You can tell us by email at dobrules@buildings.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 10/17/22.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are hearing impaired, and audio only access for those who are visually impaired.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments and a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel and may be requested by email at dobrules@buildings.nyc.gov.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and sections 3301.13.7, 3301.13.17, 3310.8, and 3310.9.1 of the New York City Building Code authorize DOB to make this proposed rule. This proposed rule was not included in DOB's regulatory agenda for this Fiscal Year because it was not contemplated when DOB published the agenda.

Where can I find DOB's rules? DOB's rules are in Title 1 of the Rules of the City of New York.

What rules govern the rulemaking process? DOB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The New York City Building Code (BC) requires a Department-registered Construction Superintendent (CS) to be designated for work subject to BC §3301.13.3 on buildings up to 9 stories in height. BC §3310.5 requires either a Department-certified Site Safety Manager (SSM) or Site Safety Coordinator (SSC) to be designated for work subject to Building Code §3310.1 on buildings 10 stories or greater in height. There is also a requirement in BC §3310.9.1 that a Concrete Safety Manager (CSM) be designated by the concrete contractor at those sites where the concrete portion of the project involves the pouring of a minimum of 2,000 cubic yards of concrete.

The proposed amendments are in response to two comments received in conjunction with the June 27, 2022 hearing concerning amendments to 1 RCNY 104-08 and 3301-02 regarding Site Safety Managers, Site Safety Coordinators and Construction Superintendents, which amendments were adopted effective August 14, 2022.

Specifically, the comments suggested that the Department

- 1) create a process to allow a Concrete Safety Manager to register as a Construction Superintendent, and
- 2) make clear that the duties of a Construction Superintendent are too numerous for a Construction Superintendent to simultaneously serve in other Building Code mandated safety oversight roles at a construction job.

These changes were not made to the prior rule amendments as there existed a timely need to implement the prior rule amendments.

Currently, Concrete Safety Managers are allowed to hold a Site Safety Manager or a Site Safety Coordinator registration. The proposed amendments will allow a Concrete Safety Manager to hold a Construction Superintendent registration as well.

The proposed amendments will prohibit a SSM or SSC from being designated, acting, or serving as the primary or alternate CS at the job for which they are the primary or alternate SSM or SSC or for any other job.

The proposed amendments will also prohibit a CSM from simultaneously serving as an SSM, an SSC, or CS on the same job for which they are serving as the CSM.

The Department of Buildings' authority for this proposed rule is found in sections 643 and 1043 of the New York City Charter and sections 3301.13.7, 3301.13.17, 3310.8, and 3310.9.1 of the New York City Building Code.

New material is underlined.

[Deleted material is in brackets.]
Asterisks (***) indicate ellipses, i.e., unamended text.

Section 1. Paragraph (1) of subdivision (b) of section 3301-02 of chapter 3300 of Title 1 of the Rules of the City of New York is amended to read as follows:

(1) Holds a valid site safety manager or site safety coordinator certificate, or a valid registration as a concrete safety manager; or

§2. A new subdivision (l) is added to section 3310-01 of chapter 3300 of Title 1 of the Rules of the City of New York to read as follows:

(l) Limitation on serving as a construction superintendent. No person designated as the primary site safety manager or site safety coordinator for a job, or acting as the alternate site safety manager or site safety coordinator for a job, may be designated, act, or serve as the primary or alternate construction superintendent for that or any other job.

§3. Paragraph (2) of subdivision (f) of section 3310-02 of chapter 3300 of Title 1 of the Rules of the City of New York is amended to read as follows:

(2) A concrete safety manager may also [be registered] hold a certification as a site safety manager or a site safety coordinator [but cannot serve as both], and a registration as a construction superintendent. No person who is serving as a concrete safety manager [and either] for a job may serve as a site safety manager [or a], site safety coordinator, or construction superintendent simultaneously on the same job [site].

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Governing Construction Superintendents and Concrete Site Safety Managers

REFERENCE NUMBER: DOB-156

RULEMAKING AGENCY: Department of Buildings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

September 13, 2022
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Construction Superintendents and Concrete Site Safety Managers

REFERENCE NUMBER: 2022 RG 066

RULEMAKING AGENCY: Department of Buildings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: September 13, 2022